

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TIMOTHY ROSS MILLER,

Plaintiff,

V.

## THURSTON COUNTY; NICOLAS

ANDERSEN; JOEL NAULT,

Defendant.

Case No. 3:23-cv-05745-TMC

ORDER DENYING PLAINTIFF'S  
FOURTH MOTION TO APPOINT  
COUNSEL

## THURSTON COUNTY; NICOLAS

ANDERSEN; JOEL NAULT,

Defendant.

Before the Court is pro se Plaintiff Timothy Ross Miller's fourth motion to appoint counsel. Dkt. 31. For the reasons explained below, the Court DENIES Mr. Miller's motion.

## I. BACKGROUND

Mr. Miller filed this case on August 20, 2023, Dkt. 1, and three previous applications for court-appointed counsel on October 13, 2023 (Dkt. 15), April 11, 2024 (Dkt. 23), and May 19, 2024 (Dkt. 27). His complaint asserts claims under 42 U.S.C. § 1983 alleging Defendants wrongfully arrested him when responding to his 911 call for a domestic violence incident, resulting in violations of his First, Second, Fourth, and Fourteenth Amendment rights. Dkt. 1, 3.

Mr. Miller requests court-appointed counsel in the instant motion for the same reasons previously stated, *compare* Dkt. 31 with Dkt. 15, 23, 27. He restates that he has unsuccessfully

1 sought legal representation since early 2022. Dkt. 31 at 2. He has appended an exhibit to this  
 2 application that summarizes his factual allegations as an explanation of the complexity of his  
 3 case (*compare* Dkt. 31-1 *with* Dkt. 27-1–9). The Court has reviewed his submission.

## 4 II. DISCUSSION

5 There is no constitutional right to appointed counsel in an action under 42 U.S.C. § 1983.  
 6 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see also United States v. \$292,888.04*  
 7 *in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section  
 8 is discretionary, not mandatory.”). In “exceptional circumstances,” the Court may appoint  
 9 counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1). *Rand v. Rowland*, 113  
 10 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).

11 The Court must evaluate (1) “the likelihood of success on the merits” and (2) “the ability  
 12 of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues  
 13 involved” when assessing whether there are exceptional circumstances warranting appointment  
 14 of counsel. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygdant v.*  
 15 *Look*, 718 F.2d 952, 954 (9th Cir. 1983)). Neither factor is dispositive and “must be viewed  
 16 together before reaching a decision on request of counsel.” *Id.*

17 Exceptional circumstances may exist where the litigant has an insufficient grasp of the  
 18 legal issues involved or is unable to state the factual bases of their claims. *See Agyeman v. Corr.*  
 19 *Corp. of Am.*, 390 F.3d 1101, 1103–04 (9th Cir. 2004) (appointing counsel where case was  
 20 unusually complex due to case law and litigant’s circumstances), *cert. denied* 545 U.S. 1128.  
 21 While any litigant “certainly would be better served with the assistance of counsel,” a litigant  
 22 requesting counsel must show more than that benefit. They must demonstrate that they are  
 23 unable to articulate their position due to the complexity of claims. *See Rand*, 113 F.3d at 1525.

24 The Court’s resources for appointing counsel are limited and must be reserved for those

1 cases meeting the standard discussed above. The Court notes that Mr. Miller's continued  
2 application for counsel has provided additional information but his core claims remain the same.  
3 His case does not meet the standard for appointment of counsel for the following reasons:

4 First, Mr. Miller's fourth motion provides the Court with similar information as his  
5 previous motions with which evaluate the likelihood of success of his case on the merits. The  
6 information provided does not present extraordinarily complex facts or legal issues. *See* Dkt. 27-  
7 1, 27-3-9. Mr. Miller's complaint alleges Defendants violated his First, Second, Fourth, and  
8 Fourteenth Amendment rights by wrongfully arresting him when responding to his 911 call for a  
9 domestic violence incident. Dkt. 1. The additional restatement of facts and claims provided in  
10 this motion (*see* Dkt. 31-1) reaffirm that he is able to articulate the legal merits of his case and  
11 point to supporting evidence without the assistance of court-appointed legal counsel.

12 Second, Mr. Miller's renewed motion does not identify any change in circumstances or  
13 facts that would render his case "exceptional" or of such complexity that warrants appointment  
14 of counsel. Mr. Miller has continued to demonstrate his ability to file pleadings and motions in  
15 this case: including, most recently, discovery requests that the Court is reviewing (*see* Dkt. 32).  
16 Mr. Miller has not shown an inability to represent himself. *See Agyeman*, 390 F.3d at 1103-04.

17 While Mr. Miller may benefit from the assistance of legal counsel as a pro se litigant, he  
18 certainly has no right to court-appointed counsel. *See Storseth*, 654 F.2d at 1353. The case does  
19 not meet the requirements for complexity, nor has Mr. Miller shown an inability to represent  
20 himself, such that appointed counsel is required. *See Rand*, 113 F.3d at 1525.

### 21 III. CONCLUSION

22 The Court has reevaluated Mr. Miller's claims and circumstances. This case lacks the  
23 circumstances warranting appointment of counsel.

24 The Court DENIES Mr. Miller's fourth motion to appoint counsel. Dkt. 31.

The Court encourages Mr. Miller to review this District's resources for pro se litigants available at <https://www.wawd.uscourts.gov/representing-yourself-pro-se>; and to consult with the Federal Bar Association's neighborhood legal clinics, with more information available at <https://www.kcba.org/?pg=Neighborhood-Legal-Clinics>.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 25th day of July, 2024.

Tony Winkler

Tiffany M. Cartwright  
United States District Judge